

REMARKS

Claims 1-24 and 27-29 are currently pending in the application. By this amendment, claims 2, 5, 9, 10, 19, 21, 22, 24, 27 and 28 are amended for the Examiner's consideration. Claims 25 and 26 are canceled. The above amendments do not add new matter to the application and are fully supported by the specification. For example, support for the amendments is provided at Figures 1 and 2, and at pages 6-8 of the specification. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

Amendment is Proper for Entry

Applicants submit that the amendments provided herein are proper for entry in that no new issues are raised that would require further search and/or consideration. In particular, the above amendments to claims 2, 5, 9, 10, 19, 21, 22, 24, 27 and 28 are made to place the application in condition for allowance or better form for appeal. No new claims are added. Specifically, the amendments to the above claims are made to address the 112, 2nd paragraph issues raised by the Examiner and are amended in accordance with the Examiner's suggestions. Specifically, as suggested by the Examiner, the above claims are amended to recite cooling medium. Additionally, the allowable subject matter of claim 26 (and intervening claim 25) is incorporated into independent claim 19. Claim 19 (and its dependent claims) is thus in condition for allowance. Allowable claim 28 has also been amended into independent form, to include the subject matter of base claim 19. Claim 28 (and its dependent claims) is thus in condition for allowance. These amendments place the application in condition for allowance or better form for appeal. Thus, entry of the amendment is proper.

Allowed Claims

Applicants appreciate the indication that claim 11 contains allowable subject matter. Applicants note that claim 11 is already an independent claim and thus should be considered in condition for allowance. Applicants appreciate the indication that claims 26, 28 and 29 contain allowable subject matter. The allowable subject matter of claim 26 (and intervening claim 25) is

incorporated into independent claim 19. Claim 19 (and its dependent claims) is thus in condition for allowance. Claim 28 has also been amended into independent form, to include the subject matter of base claim 19. Claim 28 (and its dependent claims) is thus in condition for allowance. However, Applicants submit that all of the claims, as they current stand, are in condition for allowance for the following reasons.

35 U.S.C. §112 Rejection

Claims 2, 5, 9, 10, 13-15 and 18-29 were rejected under 35 U.S.C. §112, 2nd paragraph. This rejection is respectfully traversed.

In accordance with the Examiner's suggestions, claims 2, 5, 9, 10, 19, 21, 22, 24, 27 and 28 have been amended to recite "cooling medium". No new issues are raised and such amendments should clarify the claim language and overcome the rejection of these claims.

As to the rejection of claims 13 and 18, Applicants have already amended these claims to recite that the heating element is provided, at a lower end thereof, with a device by which it can be secured pivotably and displaceably on a holder. These claims are clear and definite such that, when read in light of the specification, those of skill in the art should understand the invention.

More specifically, according to MPEP 2173.02, the test for definiteness under 35 U.S.C. 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). Moreover, definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Representative claim 13 recites, in pertinent part:

....the heating element being provided, at a lower end thereof, with a device by which it is secured pivotably and displaceably on a holder.

Applicant submits that all of the recited claim terms are clear and unambiguous and fully supported by the instant specification. For example, as clearly shown in FIG. 2, for example, the

lower end of the heating element is attached to a device which, in turn, is pivotably and displaceably connected to a holder (e.g., U shaped holder 4).

Accordingly, Applicants respectfully request that the rejection over claims 2, 5, 9, 10, 13-15 and 18-29 be withdrawn.

35 U.S.C. §102 Rejection

Claims 1-7, 9, 10 and 12 were rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 3,339,480 to Raman et al. Claim 18 was rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 4,663,517 to Huff. Claims 19-25 and 27 were rejected under 35 U.S.C. §102(b) for being anticipated by U. S. Patent No. 4,190,100 to Wallace. These rejections are respectfully traversed.

According to MPEP §2131,

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Applicants submit that the claims are distinguishable over the above references for the reasons stated below.

Claims 1-7, 9, 10 and 12

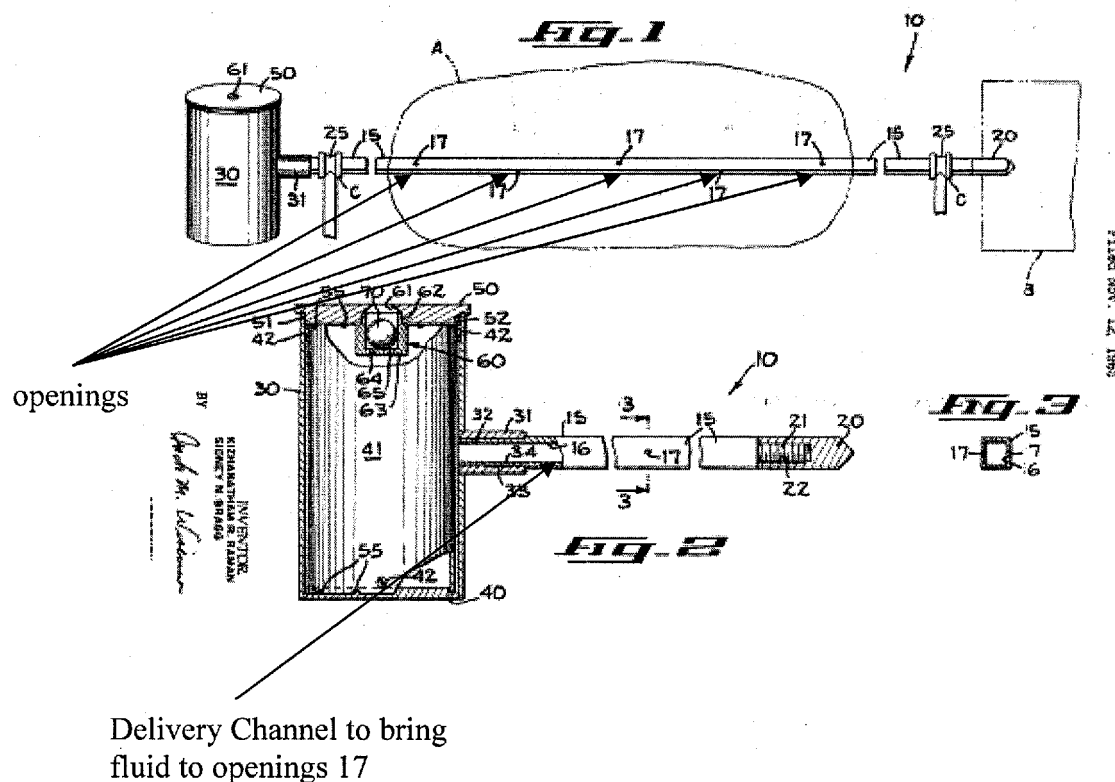
Claim 1 recites, in pertinent part:

a central body that supports foodstuffs arranged around the central body, the central body being provided with cooling through at least one delivery channel and at least one return channel in the central body; and
a heating element acting outside of the foodstuffs.

The Examiner submits that reference numeral 17 of Raman represents a delivery channel which also acts as a return channel from which fluid flows from and to a reservoir. Applicants disagree with the Examiner and submit that Raman does not show a return channel.

More specifically, Raman teaches a cooking apparatus. As shown in the annotated figures below, the cooking apparatus includes a spit 15 with a plurality of openings (discharge ports) 17 appearing on the four walls thereof. (See, col. 2, line 1.) The spit 15 includes a hollow

channel 16 such that marinated flavoring can travel from the housing 30, through the hollow channel 16 and through the openings 17 into the food. However, it is clearly seen from all of the figures of Raman, that the spit 15 does not include a return channel.



In fact, as previously discussed, the use of a return channel would not even be contemplated or workable in the spit 15 of Raman since the intended function of the apparatus is to marinate the food product through the openings 17 of the spit 15. Said otherwise, as the spit 15 includes openings 17, there can be no return channel since all of the fluid is expected to exit through the openings 17.

More specifically, Applicants submit that there is no indication, whatsoever, that any of the flavoring fluid will return to the housing 30. Instead, all of the marinate flavoring will be injected into the meat product on the spit. As disclosed at col. 3, lines 21-41,

While the spit 15 is rotating, the supply of flavoring fluid stored in the annular space between the tube 41 and the housing 30

flows through the bore 32 of the collar 31 into the longitudinal channel 16 of the spit. . .

From the foregoing a constant supply of flavoring fluid is discharged from the ports 17 of the spit 15 into the meat A impaled on the continuously rotating spit 15 during the cooking operation of the meat A. As the meat A slowly rotates over the heat source, the fat and liquid contents of the meat A are drawn to the exposed surface of the meat A. As a consequence thereof, the flavoring fluid is drawn from the annular space between the tube 41 and the housing 30 into the bore 32 of the collar 31 and then into the longitudinal channel 16 of the spit 1 and then drawn through the discharge ports 17 into the meat A to replace the fat and liquid content of the meat A drawn to the exposed surface thereof.

Dependent Claims 2-7, 9, 10 and 12

Claims 2-7, 9, 10 and 12 are dependent claims, depending from a distinguishable independent claim. As such, for the reasons discussed above, these claims are also distinguishable by the virtue of their dependency on claim 1. Also, Applicants submit that these claims include allowable subject matter on their own merits. For example, Raman does not show the features of the following claims.

Claim 3

Claim 3 recites the central body is provided with the at least one-delivery channel and return channel through which a cooled medium flows. As discussed above, Raman does not show a return channel.

Claim 4

Claim 4 recites the central body is coupled to a heat exchanger. Raman does not show a heat exchanger. If any interpretation is to be given to Raman, there is a housing 30 for storing marinate flavoring. The housing 30 is not a heat exchanger, as it only is designed to house the marinated flavorings. Also, despite the Examiner's comments to the contrary, the housing 30 of Raman does not absorb and emit heat energy, as the marinated flavoring is only flowing out of the housing (and not back into the housing to be cooled or heated).

Claim 5

Claim 5 recites the at least one delivery channel and at least one return channel accommodates a cooling medium. As discussed above, Raman does not show a return channel, much less a return channel accommodating a cooling medium.

Claim 7

Claim 7 recites the at least one cooling element which is coupled to the central body in a removable manner is arranged at a radial spacing from the central body. In this rejection, the Examiner is of the opinion that the cap 50 of Raman is the cooling element. However, Applicants submit that in Raman, there is a central body (e.g., shaft 30), but there is no cooling element coupled to the central body, much less arranged at a radial spacing from the central body.

The housing 30 is merely used to store the marinated flavoring. Second, to fill the housing 30, a screw cap 50 is threaded to the housing 30. However, neither the housing 30 nor the cap 50 are arranged at a radial spacing from the central body. Instead, the cap 50 is arranged at an end of the spit. If there is to be any interpretation, this spacing would be in the longitudinal direction. It is certainly not at a radial spacing, which would connote radial about the central body.

Claims 10 and 12

Claim 10 recites:

The rotating spit as claimed in claim 1, wherein the central body is provided with outlet openings which communicate with channels inside the foodstuffs to allow a cooling medium to flow through the foodstuffs.

Claim 12 recites:

The rotating spit as claimed in claim 10, wherein the channels formed inside the foodstuffs are connected to a coolant stream via radially oriented openings in an outer wall of the central body.

Contrary to these claims, Raman does not show outlet openings which communicate with channels. Instead, the spit 15 only includes outlet openings 17. The outlet openings 17 do not communicate with anything other than the food, itself.

Accordingly, Applicants respectfully request that the rejection over claims 1-7, 9, 10 and 12 be withdrawn.

Claim 18

Claim 18 recites, in pertinent part:

a central body that supports foodstuffs arranged around the central body, and
a heating element acting outside of the foodstuffs, the heating element being provided, at a lower end thereof, with a device by which it is secured pivotably and displaceably on a U-shaped holder on one side, with its lower end on an upper branch of the holder, the upper branch of the holder being provided underneath the foodstuffs.

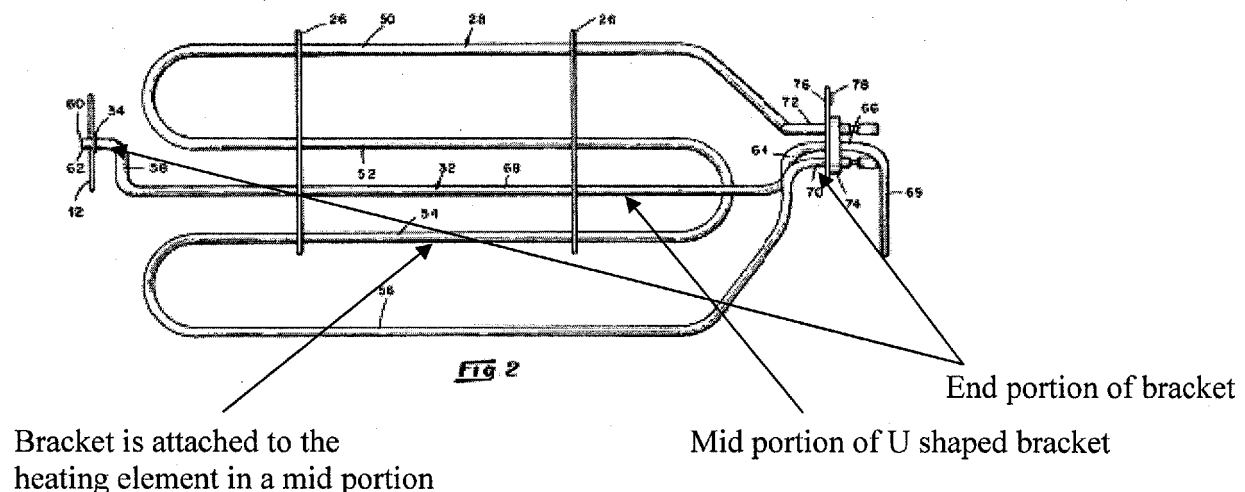
Applicants submit that Huff does not show all of the features of claim 18. Specifically, despite the Examiner's arguments otherwise, Huff does not show, for example, a heating element provided, at a lower end, with a device by which it is secured pivotably and displaceably on a U-shaped holder on one side, with its lower end on an upper branch of the holder and the upper branch of the holder being provided underneath the foodstuffs.

The Examiner is of the opinion that the heating element 28 is pivotably and displaceably secured at a lower end to an upper branch 68 of the U shaped holder 32. Applicants disagree that the Huff elements include the same structures and connections (e.g., pivot and displaceable) as recited in the claimed invention.

As previously discussed, Huff discloses at col. 3, lines 55-58, the electric heating element 28 is connected and supported by a bracket 26 along a mid portion thereof. The bracket 26, in turn, is spot welded to the U shaped holder 32 along mid portions thereof (not at any end). As the bracket 26 is spot welded to the U shaped holder 32, it is not possible for the bracket 26 to be pivotably and displaceably secured to the U shaped holder 32. (See, e.g., col. 4, lines 47-49 and FIG. 2.) In fact, as the bracket 26 is spot welded to the holder 32, it would seem that the rotation

of the holder 32 would result in the same relative movement of both the heating element 28 and the bracket 26.

Even taking a broad interpretation of Huff, Applicants still submit that the heating element 28 is not (i) provided, at a lower end thereof, with a device by which it is (ii) secured pivotably and displaceably on a U-shaped holder on one side, with (iii) its lower end on an upper branch of the holder. Specifically, taking the position that the heating element 28 is attached to the bracket (device) 26, it is clear, as shown in FIG. 2 reproduced below, that the heating element is not provided at a lower end thereof with the bracket 26 (device). Instead, as shown in FIG. 2, the bracket 26 is attached to the heating element 28 along a length (mid portion) portion thereof. Additionally, the bracket 26 is spot welded to the U shaped holder 32 at a mid portion thereof; not at ends thereof. As such, as the bracket 26 is spot welded to the U shaped holder 32, neither the bracket 26 nor the heating element 28 are secured pivotably and displaceably on the U-shaped holder 32. Instead, the spot weld would act to securely fix in a non-moveable manner the bracket 26 to the holder 32.



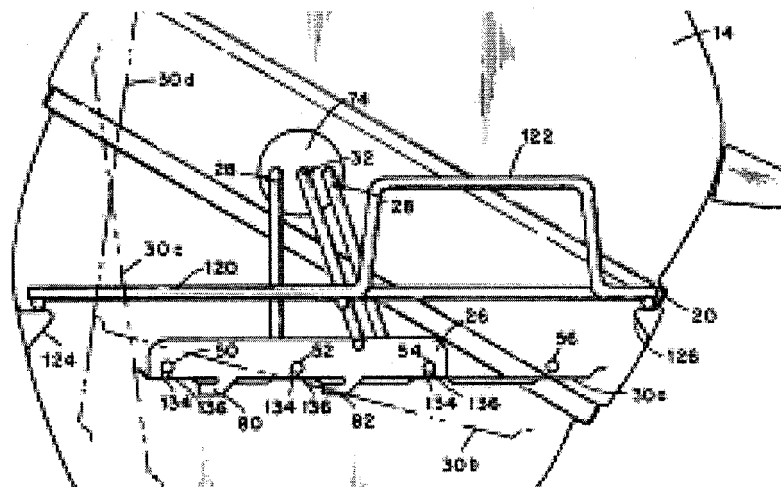
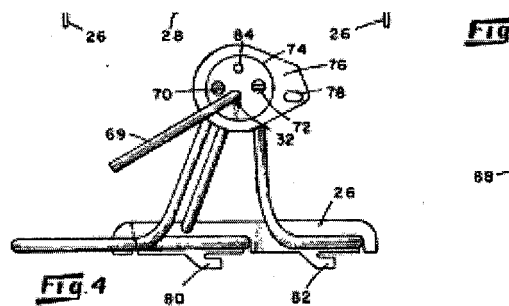
Also, it is disclosed at col. 7, lines 7-15,

The heating element segments 50, 52 and 54 are secured on the support bracket 26 in key-hole shaped channels 134. In order to insert the heating elements 50, 52 and 54 into the channels 134, flanges 136 are bent perpendicularly to allow sufficient room to insert the heating element. Once the elements 50, 52 and 54 are inserted, the flanges 136 are bent back to the position shown in

FIG. 7 and they secure the heating elements 50, 52 and 54 within the key-hole shaped channels 134.

There is no disclosure whatsoever, though, which would teach that the heating element 26 is connected to the holder 32 via the bracket 26 in a pivoting and displaceable manner.

Also, Applicants note, referring to FIG. 7 partially reproduced below and FIG. 4, that the heating element is mounted to a bracket 74, and not directly to the holder 32. The bracket 74 allows for rotation of the heating element with the U-bracket (in unison).



More specifically, col. 5, line 1 to col. 6, line 2 describes the mechanism of rotation of the heating element 28 and the holder 32. Applicants note that these passages, though, do not disclose the heating element 28 is secured pivotably and displaceably on the holder 32. Instead, both the holder 32 and the heating element 28 are connected to an interconnecting segment 66

and both appear to be rotating in unison. More specifically, as disclosed at col. 5, in pertinent part:

The two ends 70 and 72 of the electric heating element 28 extend through and are fastened to a bracket 74 and a bracket arm 76 extends outwardly from the bracket 74. A nipple 78 is formed on the arm 76 for the purpose of engaging detents in the bowl 12 as will hereinafter be described in greater detail. The interconnecting segment 66 of the adjusting rod 32 also extends through the bracket 74.

.... Also, in FIG. 4, the heating element ends 70 and 72 and the adjusting rod 32 are shown extending through the bracket 74 with an aperture 84 disposed immediately above and centered with respect to the ends 70 and 72.

In FIG. 5 there is shown a heating element attachment bracket 86 which includes apertures 88 and 90 that are dimensioned to receive the ends 70 and 72 of the heating element. These heating element ends 70 and 72 are inserted through the apertures 88 and 90 and the bracket 86 is crimped to secure the heating elements therein. The bracket 86 also includes an aperture 92 that is spaced from the apertures 88 and 90 in the same manner as aperture 84 is spaced from the heating elements 70 and 72. In construction, the heating element ends 70 and 72 are inserted through apertures 88 and 90, the bracket 86 is crimped, and the ends 70 and 72 are inserted through bracket 74. Thus, the attachment bracket 86 is disposed immediately behind the bracket 74 as shown in FIG. 4, and the apertures 84 and 92 are aligned. A sheet metal screw is then threadably secured through apertures 84 and 92 to secure together the brackets 74 and 86.

... Referring to FIGS. 6 and 2, it will be appreciated that the bracket 74 will rotate in conjunction with the heating element 28 and the adjusting rod 32. In FIG. 6, the heating element ends 70 and 72 and the interconnecting section 66 of the adjusting rod 32 are shown going through the bracket 74. The attachment bracket 86 is shown securing the heating elements 70 and 72 to the bracket 74 by means of a screw 102.

As the heating element 28 and the adjusting rod 32 rotate, the attachment bracket 74 moves the nipple 78 in an arc, and detents 104, 106, 108 and 110 are formed in the bowl 12 to catch and resiliently hold the nipple 78 and bracket 74 in one of four selected

positions. When the nipple 78 is in the detent 104, the heating element 24 is horizontal.

Accordingly, Applicants respectfully request that the rejection over claim 18 be withdrawn.

Claims 19-25 and 27

Applicants submit that the rejection over Wallace is moot in view of the above amendments. Applicants note that the amendments made to claim 19 are to expedite examination of the above matter and to place the application in condition for allowance. Applicants are not conceding, though, that previously presented claim 19 does not include allowable subject matter. Accordingly, Applicants respectfully request that the rejection over claims 19-25 and 27 be withdrawn.

35 U.S.C. §103 Rejection

Claim 8 was rejected under 35 U.S.C. §103(a) for being unpatentable over Raman et al. and U.S. Patent No. 4,810,856. Claims 13-15 was rejected under 35 U.S.C. §103(a) for being unpatentable over Raman et al. and Huff. Claims 16 and 17 were rejected under 35 U.S.C. §103(a) over Raman in view of U.S. Patent No. 5,025,639 to Thomas. These rejections are respectfully traversed.

Claims 8 and 13-17 are dependent claims, depending from a distinguishable independent claim. As such, for the reasons discussed above, these claims are also distinguishable by the virtue of their dependency on a distinguishable independent claim. Also, Applicants submit that these claims include allowable subject matter on their own merits.

Claim 13

Claim 13 recites:

The rotating spit as claimed in claim 1, wherein the heating element is provided, at a lower end thereof, with a device by which it can be secured pivotably and displaceably on a holder.

The Examiner is of the opinion that Huff shows the features of the device which is secured pivotably and displaceably on a holder. Applicants submit that this is not accurate for the reasons discussed above. That is, the device (bracket 26) of Huff is spot welded to the U shaped holder 32. As such, it cannot be secured pivotably and displaceably on the holder 32. Also, the heating element 28 of Huff is not attached at a lower end to the bracket 26. As discussed above, the bracket 26 attaches to the heating element along a mid portion of the length. Also, as the bracket 26 is spot welded to the holder 32, it would seem that the rotation of the holder 32 would result in the same relative movement of both the heating element 28 and the bracket 26.

Claim 14

Claim 14 recites:

The rotating spit as claimed in claim 13, wherein the holder is U-shaped and the heating element is secured on one side with its lower end on an upper branch of the holder, the upper branch of the holder being arranged underneath the foodstuffs.

It appears that the Examiner is of the opinion that the holder is U-shaped and the heating element of Huff is secured on one side with its lower end on an upper branch of the holder. Applicants submit, though, that Huff shows that the holder 32 is connected to a bracket 26 which, in turn, is connect to the heating element 26. The heating element is attached at mid portions along a length thereof to the mid portions of the U shaped holder 32. the heating element is not attached with its lower side to an upper side of the holder 32.

CONCLUSION

Applicants appreciate the indication of allowable subject matter; however, in view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,
Can ÜMIT et al.



Andrew M. Calderon
Reg. No. 38,093

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191